

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LENNY BRIKN, JR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

No. C16-1042RSL

ORDER DENYING MOTION
TO VACATE, SET ASIDE, OR
CORRECT A SENTENCE BY A
PERSON IN FEDERAL CUSTODY

This matter comes before the Court on Petitioner's "Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct a Sentence by a Person in Federal Custody." Dkt. # 1. In September 2014, Petitioner was sentenced to 84 months' imprisonment and a five-year term of supervised release for violating 18 U.S.C. § 924(c)(1)(A)(ii). This conviction was based on the conclusion that Petitioner's underlying conduct constituted "crime[s] of violence" (conspiracy to commit robbery and attempted robbery under 18 U.S.C. §§ 1951(a), -(b)(1)) and a "drug trafficking crime" (attempted possession of marijuana with intent to distribute under 21 U.S.C. §§ 846, 841(a)(1), -(b)(1)(D)). Petitioner now challenges the portion of his Section 924(c)(1)(A)(ii) sentence that is predicated on the "crime[s] of violence" and seeks resentencing in light of the Supreme Court's recent decisions in Johnson v. United States, 135 S. Ct. 2551 (2015), and Welch v. United States, 136 S. Ct. 1257 (2016).

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1 The United States opposes Petitioner's motion, noting correctly that Johnson does not
2 affect whether Petitioner's predicate conduct constituted "crime[s] of violence." Dkt. # 5. At
3 least one of the predicate offenses that Petitioner contests—attempted robbery—remains a
4 "crime of violence" under 18 U.S.C. § 924(c)(3)(A), a provision untouched by Johnson. Thus
5 Johnson does not affect Petitioner's conviction and sentence under Section 924(c)(1)(A)(ii).

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7 Accordingly, Petitioner's motion to vacate, set aside, or correct his sentence is DENIED.
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11 DATED this 12th day of September, 2016.

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14 Robert S. Lasnik
15 United States District Judge
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